

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BRAINWAVE SCIENCE, INC.

Plaintiff

Affidavit of Dr. Lawrence A. Farwell in
Support of Motion to Compel

- against -

Civil Action No.: 21-cv-4402 (BMC)

ARSHEE, INC., DR. LAWRENCE A.
FARWELL, DR. THIERRY MAISON and
BRAIN FINGERPRINTING FOUNDATION

Defendants.



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Dr. Lawrence A. Farwell, being duly sworn, declares under penalty of perjury as follows:

1. I, Dr. Lawrence A. Farwell, PhD, am submitting this Affidavit in support of a motion to compel Krishna Ika and Brainwave Science, Inc. (BWS Inc.) to remove false, defamatory, and fraudulent material on the BWS website, specifically the following.
2. At this link on the Brainwave Science, Inc. website
<https://brainwavescience.com/testimonial/>, the statement is as follows.

Testimonials



Dr Adel Al Eid (Former Brig. Gen at National Information in Ministry of Interior, Saudi Arabia)

“iCognitive empowers investigators to accurately measure information hidden in a suspect’s brain, leading accurately to the terrorists who schemed, contributed or carried out any act of terrorism or a criminal offence even before it happens. This technique enables counter terrorism officials to scientifically test suspected terrorists and to indict or exonerate them based on the information stored in their brains, even if a suspect has participated in a sleeper cell.”

3. Dr. Adel Al Eid never made that statement, or any statement remotely similar to that statement, or any statement that might be construed as an endorsement of iCognative or Brainwave Science, Inc., or any statement at all that mentioned iCognative or Brainwave Science, Inc.
4. Dr. Al Eid is a long-time colleague and friend of mine with whom I have been working for years on implementing the genuine Farwell Brain Fingerprinting in Saudi Arabia. In addition to being a professional colleague, he is a personal friend of mine. He has entertained me at his home in Riyadh, a rare honor in that closed, formal society.
5. He holds the rank of General as well as a PhD-level expert in biotechnology. He is a rare combination of a highly decorated General and a renowned scientist and technologist.
6. I have spoken with him personally about the above quotation, and he has assured me that he never did and never would make such a statement.
7. The reason that the above statement on the Brainwave Science website is causing personal and professional damage to me personally is as follows.
8. At the highest level, the international community of world-class counterterrorism experts, to which both Dr. Al Eid and I belong, is a small community. The major players know each other, and know what is going on around the world, especially in the Middle East.
9. It is well known in that community that my invention of Brain Fingerprinting has been ruled admissible in court, published in the leading peer-reviewed scientific journals, applied at the CIA, the FBI, and the US Navy, sold and delivered through technology transfer to major counterterrorism agencies, and successfully applied in counterterrorism operations.
10. It is also well known that Brainwave Science's iCognative product has achieved none of these milestones. It has never been tested, peer-reviewed and published, sold and implemented in any major government agency anywhere, or applied successfully in any real-world case.
11. Moreover, it is also well known to Dr. Al Eid and throughout that community that Krishna Ika and Brainwave Science currently stand accused of fraud by authorities in Pakistan, South Africa, Thailand, Nigeria, and elsewhere. The alleged fraud involves false claims that Ika and his employees are qualified, credentialed, trained, and competent to effect a technology transfer of a sophisticated forensic science technology to a government agency, as well as various fraudulent acts allegedly committed in the course of the same, such as faking brainwave demonstrations. It is also well known that an individual who was listed on the BWS website as a board member and identified in correspondence from BWS' attorney as a corporate officer has been convicted in US federal court of attempting to sell stolen high-technology secrets to a foreign government – essentially the same crime of which Mr. Ika now stands accused in multiple jurisdictions.
12. Anyone with knowledge of the field will immediately recognize that the above statement on the Brainwave Science website is false and fraudulent. The iCognative product has never been shown either in the scientific laboratory or the field to be capable of doing any

of the things claimed. Everyone expert will also know that, as a scientist in the field, Dr. Al Eid would be well aware that these claims attributed to him are false and fraudulent.

13. For Dr. Al Eid, the attribution of a false and fraudulent statement such as the one on the BWS website, and the association with a notorious alleged criminal such as Mr. Ika, are extremely damaging to his standing in the counterterrorism, military, and scientific communities.
14. It is also well known in the world-class counterterrorism community, especially in the Middle East, that I am a close associate, collaborator, and friend of Dr. Al Eid. Damage to his reputation and standing results inevitably in damage to mine.
15. Moreover, damage to Dr. Al Eid's reputation and standing and mine interfere with our ongoing business operations, and with my practicing and profiting from my profession as the inventor and world's leading expert in Farwell Brain Fingerprinting.
16. The following additional facts are relevant and necessary in order for the Court to make an informed decision on said motion. The reason that several of these facts are relevant and necessary will not be immediately apparent until the rationale for this motion, and the damage that it is designed to mitigate or prevent, has been fully explained below.
17. In a hearing on November 30, 2021 in the present case, Judge Cogan asked how much profit accrued from sale of iCognitive brainwave systems by Mr. Tomkins' client, Brainwave Science, Inc.

Mr. Tomkins stated that his client had sold iCognitive systems for a cost of about \$400,000 per license, and each sale included several licenses, and that more than one such sale had taken place.

All parts of that statement are entirely false.

Mr. Tomkins knows his statement is false, and knew it at the time.

Brainwave Science, Inc. has never sold a license for an iCognitive system (or any other brainwave system) for \$400,000 (or anything remotely approaching that figure). They have not sold multiple licenses to the same customer for that price, or for any price. They have not made similar sales to multiple customers.

To my knowledge, Brainwave Science, Inc. has never sold any of their iCognitive systems to anyone. As the inventor and world's leading expert in Brain Fingerprinting and the individual who has successfully implemented Brain Fingerprinting at the FBI, the CIA, the US Navy, and in national counterterrorism and law enforcement agencies around the world, I am in a position to know. BWS Inc. has supplied some of their brainwave systems to a few potential clients for the purposes of demonstration, but nothing remotely resembling what Mr. Tomkins claimed has ever occurred.

Mr. Tomkins' false statement is material to the case at hand. He made the statement in answer to the only question the judge asked during the hearing. The hearing was about (false) allegations by Mr. Tomkins' client that the Defendants (including myself) had misappropriated his client's trade secrets embodied in the brainwave systems specified in Mr. Tomkins' false statement, and thereby cost his clients potential sales and money. The amount of money accruing from sales was an important part of the judge's deliberations regarding alleged damages.

In reality, Mr. Tomkins' client's entire brainwave system was a copy of a system that I invented, patented, and developed, and had been using since the 1980s. In particular, I provided Mr. Tomkins' client with all the details of a system I developed in 2007. I provided his client with all the algorithms, experimental protocols, specifications, methods, and everything they needed to build the system to imitate what my original system accomplished. The central contention of this lawsuit is equivalent to some businessman with zero knowledge, expertise, experience, credentials, education, or aptitude in aeronautics or airplanes accusing the Wright brothers of stealing the intellectual property of the airplane from him. I would have no imaginable reason for misappropriating Mr. Tomkins' client's untested and unproven system, when I had a brainwave system of my own that I had developed, published in the scientific journals, tested and proven at the FBI, the CIA, and the US Navy, and successfully applied in the field, a system that had been ruled admissible as scientific evidence in court. Brainwave's system has achieved none of these.

The following relevant facts currently stand as undisputed. Mr. Tomkins has had multiple opportunities to dispute these facts, and never has done so. His response to being confronted with the facts has consistently been to obfuscate and attempt to redirect and change the subject, citing other, irrelevant or marginally relevant facts (and in some cases lies).

I. Regarding Dr. Lawrence Farwell:

- a. Dr. Farwell is a Harvard graduate with a PhD in biological psychology and a former research associate at Harvard Medical School.
- b. Dr. Farwell is the inventor of Brain Fingerprinting, as per the Patents and peer-reviewed publications cited below. Dr. Farwell has published extensively on Brain Fingerprinting in leading peer-reviewed scientific journals.
- c. Dr. Farwell was selected by *TIME* magazine as one of the top innovators this century, "the Picassos or Einsteins of the 21st Century."
- d. Dr. Farwell has conducted Brain Fingerprinting research at the FBI, the CIA, and the US Navy and published the results in peer-reviewed scientific journals.
- e. Dr. Farwell has successfully applied Brain Fingerprinting science in real-world criminal cases.
- f. The science and technology of Brain Fingerprinting that Dr. Farwell invented and developed and his expert testimony on it have been ruled admissible in court.
- g. Dr. Farwell has successfully practiced his profession as a forensic neuroscientist, and specifically as the world's leading expert in the Brain Fingerprinting science and technology that he invented, for over 25 years.

II. Regarding the BWS system: Unlike the genuine Farwell Brain Fingerprinting that Dr. Farwell has developed and implemented in the US and throughout the world, the BWS product that Mr. Tomkins, Brainwave Science, LLC, Brainwave Science, Inc., and Ika have been attempting to market, the BWS system:

- a. Has not been shown to be an effective implementation of the Brain Fingerprinting scientific technology that was invented by Harvard-trained neuroscientist Dr. Farwell, who was selected by TIME magazine as one of the top innovators this century, “the Picassos or Einsteins of the 21st Century.”
 - b. Has not been shown to meet the 20 Brain Fingerprinting Scientific Standards that Dr. Farwell has published and that are met by Dr. Farwell’s versions of the technology. There is no evidence anywhere that the counterfeit product and faux training by unqualified individuals that BWS Inc. is offering meet these standards.
 - c. Has not been tested and proven at the CIA, the FBI, and the US Navy.
 - d. Has never been applied in real-world criminal cases, including serial killer JB Grinder and innocent murder convict Terry Harrington.
 - e. Has not been proven over 99% accurate in research at the FBI, the CIA, the US Navy, and elsewhere published in the top peer-reviewed scientific journals. There is no evidence anywhere that what BWS Inc is offering has achieved such accuracy in scientific studies or field applications.
 - f. Has never achieved 99% accuracy, or any other proven level of accuracy, in any published research, forensic applications, field applications, or in any other context.
 - g. Has not been featured in major national and international news media, including CBS Evening News, ABC World News, CNN, PBS, BBC, CBS 60 Minutes, ABC Good Morning America, the Discovery Channel, The New York Times, The Washington Post, TIME Magazine, and US News and World Report.
 - h. Has not been proven to be capable of detecting bomb makers, criminals, and terrorists, in peer-reviewed publications.
 - i. Lacks the qualities and achievements of the genuine Brain Fingerprinting invented and developed by Dr. Farwell, as listed herein and in the Exhibits.
 - j. Has produced no evidence that the unproven technology BWS Inc is offering achieves the same accuracy, reliability, or validity of the genuine Brain Fingerprinting practiced by Dr. Farwell and other competent, trained, and credentialed scientists.
- III. Regarding Mr. Ika and the BWS employees: Neither Mr. Ika nor anyone else one employed by Brainwave Science, LLC, Brainwave Science, Inc.:
- a. Has ever been trained in Brain Fingerprinting by a qualified Brain Fingerprinting expert such as Dr. Lawrence Farwell or FBI forensic scientist Dr. Drew Richardson;
 - b. Has ever conducted or published Brain Fingerprinting research;
 - c. Has ever successfully applied Brain Fingerprinting in real-world cases;
 - d. Has ever conducted Brain Fingerprinting research for the FBI, the CIA, or the US Navy;
 - e. Is qualified to conduct a scientific Brain Fingerprinting test that meets the Brain Fingerprinting Scientific Standards; or

- f. Has been featured in any of the major news sources mentioned above that have featured Dr. Farwell and his genuine Brain Fingerprinting invention.
18. Mr. Tomkins' lie to the judge in the hearing described above was not an isolated, accidental, or random incident. It was a carefully planned, strategic deception. In Mr. Ika's affidavit, Mr. Ika's touting of BWS Inc.'s success in the marketplace was confined to this: "[unnamed and unspecified] Agencies and educational institutions within several countries have successfully conducted testing and validation studies on our system." It is not an accident that Mr. Ika did not claim that BWS Inc. had sold its system to multiple customers, each one of which purchased multiple systems for \$400,000 each, as Tomkins did. Such a statement, in writing in an affidavit, would have inevitably been proven false, and Mr. Ika would have unquestionably committed perjury. (Mr. Ika made several other demonstrably and unequivocally false statements in his affidavit. These I will address elsewhere and will not discuss here, except for one, which is discussed immediately below.) Tomkins strategically told his substantive and material lie in a situation where it would be heard and relied upon by the judge, and yet he was not under oath, and it was not in writing.
19. In the above referenced hearing on November 30, 2021 in the present case, Krishna Ika ("Ika") lied under oath. When asked both by our attorney Joseph Carbonaro and by Judge Cogan whether BWS Inc. system included any open-source or public domain components, Ika repeatedly answered "No." There are dozens if not hundreds of instances in the software proving that Ika's statement is unequivocally and demonstrably false.

With respect to the scientific protocols, algorithms, mathematics, statistics, and every aspect of the procedures for conducting a Brain Fingerprinting test, everything in the BWS software was derived from information I provided to BWS. This is and was in the public domain due to my colleagues and myself having implemented all of the above in software in several iterations, beginning in 1986 when I first invented the system, and including software that I shared with many others over the years. This includes colleagues including William Iacono at the University of Minnesota, my colleagues at the University of Illinois and Harvard, the FBI, the CIA, the US Navy, and many others. All of above were also disclosed in patents wherein I am the inventor that have now expired. All of the above were also disclosed in scientific publications by myself and colleagues on our research at the FBI, the CIA, the US Navy, and elsewhere, including Farwell and Donchin (1986; 1988; 1991), Farwell and Smith (2001) Farwell (2012), and Farwell et al. 2013; 2014). Others including Dr. Iacono and colleagues also included much of the same in scientific publications.

The above features were implemented using several open-source and public-domain software packages, as explained by Dr. Thierry Maison in his affidavit.

Moreover, upon a more thorough examination of the relevant evidence, the Court will realize that Dr. Maison was telling the truth when he said he downloaded the code in question from an open source on the internet where BWS had (intentionally or unintentionally) allowed it to be uploaded.
20. In summary of (1.) and (2.) above, Ika and Tomkins have lied to the judge in an attempt to present BWS Inc. as a successful company that has been successfully selling and

implementing a proven, proprietary software package at major government agencies and taking in millions of dollars in revenues. Factually, BWS Inc. has never sold any of their systems to any government agency, and does not have a system that is either proven or proprietary.

21. The following facts are relevant to the damage to Dr. Adel Al Eid's reputation and standing in the world-class counterterrorism and scientific communities, to my own standing and reputation therein, to my business activities in conjunction with Dr. Al Eid, and to my overall business program, particularly in the Middle East.
22. I testified against Ika in a fraud case in Dubai that ended up in several jurisdictions. Ika demanded that I change my sworn testimony, and I refused.
23. Authorities in South Africa, Pakistan, Nigeria, and Thailand have also accused Ika and BWS Inc. of fraud involving fraudulently claiming to have sufficient expertise, knowledge, and technology to effect a technology transfer of my Brain Fingerprinting invention to government agencies. This alleged fraud included faking demonstrations of "brainwave analysis" that involved no brainwave analysis, but only display of previously prepared graphics files, claiming to represent me (Dr. Lawrence Farwell, the inventor of Brain Fingerprinting) when they did not, and several other equally fraudulent actions.
24. In the event that Ika is brought to justice for his alleged crimes involving fraud related to Brain Fingerprinting in South Africa, Pakistan, Nigeria, Thailand, and/or elsewhere, I, Dr. Lawrence Farwell, as the inventor and world's leading expert on Brain Fingerprinting, will almost certainly be called again as a witness against Ika.
25. Much more is at stake here than the question of whether I or some Indian businessman makes money on my invention of Brain Fingerprinting. With regard to the benefit to mankind, that consideration is trivial at best. Fortunately, so far, Ika, Tomkins, and Brainwave Science, Inc. have done little damage to the cause of justice and global security. This case could change that dramatically. So far, Ika and his employees have failed totally for many years to defraud government agencies into engaging them to effect a technology transfer of a critically important forensic science technology – my invention of Brain Fingerprinting. This has included the fraudulent claim that they are qualified and capable not only of practicing and implementing my invention, but also of training others to do so. This includes two patently fraudulent claims: (1) That the totally untested and unproven iCognative system, which has never been tested in the laboratory and published in the scientific journals or applied successfully in real-world criminal cases, is a viable forensic science technology; and (2) that BWS Inc.'s "trainers" – who have never conducted a single Brain Fingerprinting test that meets the established Brain Fingerprinting scientific standards, either by conducting it in the laboratory and publishing in a peer-reviewed journal, or by conducting a successful field test on real-world criminal or terrorist suspects – are capable of training potential clients up to the level of skilled forensic scientists competent to conduct forensic neuroscience tests upon which peoples' lives and freedom depend.

If Ika's, Tomkins', and Brainwave Science, Inc.'s efforts to defraud government agencies ever succeed, this will be a disaster for the cause of justice and global security. If any government agency engages Ika and BWS Inc. to effect a technology transfer of their untested and unproven system and their "training" by totally unqualified trainers, and

said agency attempts to implement what they received from BWS Inc. in the real world of counterterrorism and criminal investigations and relies on the results, the outcome will be that people lacking the requisite training and expertise will attempt to apply an untested and unproven technology in situations where lives and freedom depend on the result. It is not an exaggeration to point out that the most likely outcome of such an endeavor will be that grave miscarriages of justice will ensue, innocent people will die needlessly, and terrorists and criminals will get away with murder.

I say that not simply as a litigant in a civil case with my own self-interest at stake, but more importantly as a forensic scientist and counterterrorism expert who has experienced first-hand over a period of decades the necessity for effective and competent practice of forensic science by properly qualified, credentialed, and trained experts, in order to establish justice and prevent such disasters.

If this Court plays a part in such an outcome, then this Court and the American justice system will have been abused by criminals in committing their crimes of, at a minimum, fraud, resulting in dire consequences for the unfortunate direct and collateral victims and casualties of that fraud.

26. The false, libelous, and fraudulent quotation on the BWS website cited above is part of a pattern of fraud on the part of Ika, Tomkins, and Brainwave Science designed to defraud government agencies into engaging them as experts capable of effecting a technology transfer of a sophisticated forensic-science technology to a government agency, which they are not. The inclusion of a false endorsement by Dr. Al Eid, a respected scientist and counterterrorism expert, may be perceived as providing a veneer of respectability, legitimacy, and credibility to their fraudulent activities that is not warranted by the reality of what they are perpetrating.
27. For this reason, I ask the Court to exercise its discretion and compel Mr. Ika and Brainwave Science to remove from their website the material cited above.

[Signature page immediately follows.]

Lawrence A. Farwell

Lawrence A. Farwell

Date: February 26, 2022

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